

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America,)
)
 Plaintiff,)
) CR15-00707-PHX-SRB
 vs.) Phoenix, Arizona
) March 3, 2016
 Abdul Malik Abdul Kareem,)
)
 Defendant.)
)
)
)

BEFORE: THE HONORABLE SUSAN R. BOLTON, JUDGE
EXCERPT OF REPORTER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY #11

TESTIMONY: SPECIAL AGENT STEWART WHITSON - PART #3
(Pages 121-193, Inclusive.)

APPEARANCES:

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E X C E R P T O F P R O C E E D I N G S

THE COURT: Good afternoon, ladies and gentlemen.
Please sit down. The record will show the presence of the
jury, counsel, and the defendant.

Mr. Maynard, you may continue your cross-examination
of Agent Whitson.

MR. MAYNARD: Thank you, Your Honor.

SPECIAL AGENT STEWART WHITSON, WITNESS, SWORN

CROSS EXAMINATION (cont'd)

Q Good afternoon, Agent Whitson.

A Good afternoon, sir.

Q A couple of -- a few followup questions that I have from
yesterday.

In the course of your investigation, you determined
that Mr. Abdul Kareem did not ever have a Twitter account; is
that correct?

A Yes.

Q Okay. And did the FBI do a canvass of the apartment
complex that Simpson and Soofi lived in after this incident?
In other words, did they go door-to-door and talk to the
residents in the area?

A Yes.

Q And in the process of doing that, none of them --

Or strike that.

You also, when that canvass was being done, you had

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1 pictures of Simpson and Soofi; Nadir Soofi, Ali Soofi, Abdul
2 Kareem, and others, correct?

3 A Well, I didn't conduct the canvass, but a number of agents
4 did and I would assume they would have had pictures of all
5 those people. That's right.

6 Q The purpose of that canvass was to go there and say, "Can
7 you identified these people as either being here or living
8 here"?

9 A Yes. That would be, yes.

10 Q And is it fair to say that nobody identified Abdul Kareem
11 as ever coming over there?

12 A I don't recall there being anyone that did that.

13 Q Okay. You don't recall anybody who said, "I saw him
14 here"?

15 THE COURT: Well, he wouldn't recall what anybody
16 said because he didn't do it. So you can only ask him if
17 there were any positive results of people saying they had seen
18 him.

19 BY MR. MAYNARD:

20 Q I understand. From the 302 that you reviewed as part of
21 your investigation, is it fair to say that nobody identified
22 Mr. Abdul Kareem as having been there?

23 A I do not recall anyone from the apartment complex
24 remembering him.

25 Q Okay. Now, we heard Ali Soofi's testimony yesterday and

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1 there were a number of times that he had been interviewed by
2 the FBI prior to his coming in to testify, correct?

3 A Yes.

4 Q And you had participated in a number of those interviews?

5 A Yes.

6 Q I believe the last two?

7 A Two, yes.

8 Q One was in September where it was done telephonically --
9 or with a video camera?

10 A Yes.

11 Q He was in Kansas with a lawyer. You were here with
12 somebody from the U.S. Attorney's Office?

13 A Yes.

14 Q Okay. And you prepared a 302 from that interview?

15 A Yes.

16 Q But you did not videotape or audiotape that interview?

17 A Yes. I did not.

18 Q And you would have put down everything that you thought
19 was important that he said in that interview in your 302?

20 A Yes.

21 Q Okay. He never mentioned in that interview that he had
22 seen Abdul Kareem assisting or directing his brother and
23 Mr. Simpson in cleaning the weapons, did he?

24 A I would have to review my report to --

25 Q You had a notebook. Do you want to look at September --

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1 September 29th?

2 A I have just reviewed my report from September 25, 2015,
3 and I don't see that he was asked that question or that he
4 provided any information related to cleaning or disassembling
5 or reassembling a weapon.

6 Q All right. And I said "September 29." That was the date
7 that the 302 was finalized and entered up in the top
8 right-hand corner, correct?

9 A Yes, sir.

10 Q But the interview actually occurred on September 25th?

11 A Yes.

12 Q Okay. You then flew to Dallas, Texas, and met with him at
13 his mother's house with Ms. Brook?

14 A In Texas.

15 Q In Texas. Somewhere near Dallas?

16 A Not near Dallas, but, yes, in Texas.

17 Q And you did not audio or videotape that interview?

18 A No, I did not.

19 Q That was the first time that he ever mentioned that he had
20 seen my client directing Mr. Soofi, his brother, and
21 Mr. Simpson in how to clean and disassemble any of these
22 weapons, correct?

23 A I think that's correct.

24 Q Okay. And that interview took place on January 29th of
25 2016?

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1 A I'm not sure if I have a copy of that report with me. If
2 you have it --

3 THE COURT: Well, does that date sound about right?

4 THE WITNESS: That sounds about right, Your Honor.

5 MR. MAYNARD: Thank you.

6 BY MR. MAYNARD:

7 Q Now, additionally, as you were preparing for this trial,
8 you went into the jail, Maricopa County Jail, to interview
9 Mr. Verdugo, correct?

10 A Yes.

11 Q And that was to get him ready to come over here and
12 testify?

13 A What do you mean by that?

14 Q Well, I mean, didn't you want to go, as you had done with
15 Mr. Soofi, and follow up and see what his testimony would be?

16 A Not to see what his testimony would be, but I did conduct
17 an interview with him, a trial prep interview.

18 Q I mean, Mr. Soofi had been interviewed by the FBI on five
19 or six occasions. Yet you and Ms. Brook determined that it
20 was necessary to fly to Texas the end of January prior to this
21 trial. That was to see what his testimony was going to be,
22 correct?

23 A Not to see what his testimony was going to be. To
24 interview him and conduct a pretrial interview.

25 Q Okay. You did the same thing with Mr. Verdugo, but you

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1 did it in the county jail?

2 A Yes. I think -- I believe it was the county jail.

3 Q And you did not tape that interview either, did you?

4 A No. We do not tape interviews in the jail.

5 Q You can take a computer into the county jail, correct?

6 A I don't know what the -- what you're allowed to take into
7 the jail.

8 Q Did you ask anybody if you could bring in a recording
9 device?

10 A On the first time that I went to interview him, I did ask
11 if I could bring a recording device.

12 Q And in December of 2015 when you went to the county jail
13 to interview Mr. Verdugo, did you ask them if you could bring
14 in a recording device?

15 A If that was the first one -- so the first time we
16 interviewed him in the jail, I asked them if I could bring in
17 a recording device, yes.

18 Q And are you telling me that somebody told you that you
19 could not?

20 A Yes. The people in the entry area said they wouldn't
21 allow the recording device to be brought in.

22 Q Okay. And it was in that interview when you told
23 Mr. Verdugo that you would make a statement to -- or provide a
24 statement to the County Attorneys to assist him in the
25 prosecution that the County was bringing against him?

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1 A No. I didn't make that statement.

2 Q Did you tell him you would provide him with a statement?

3 A No. I did not tell him I would provide him with a
4 statement.

5 Q Did you --

6 A But --

7 Q Did you prepare a statement?

8 A Ultimately, I prepared a statement.

9 Q What was the purpose of the statement?

10 A Based on my understanding that observations we had made
11 would contain potentially exculpatory material towards his
12 state charges. So in other words, we had witnessed things
13 that could tend to show his innocence, we had a constitutional
14 mandate to provide that information to the prosecutor to let
15 them know, you know, what we had observed.

16 Q And did you provide the prosecutors with this
17 constitutionally-mandated information?

18 A Yes. I provided it to the prosecutors.

19 Q And did you prepare it on the day before you went to
20 interview Mr. Verdugo?

21 A I believe it was prepared after.

22 Q Your Honor, can --

23 Well, Mr. Verdugo testified that he was -- I believe
24 he said he was shown a copy.

25 A No. That's impossible. He wouldn't have been shown a

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1 copy of the statement I prepared. He was never shown a copy
2 of the statement I prepared by me.

3 Q Can Mr. Whitson be shown Exhibit 564.

4 Agent Whitson, is this one of the statements that was
5 prepared by you?

6 A Yes.

7 Q Okay. And were you aware that Agent Nash also prepared a
8 statement concerning his observations?

9 A Yes.

10 Q And was Mr. Verdugo told that the statements would be
11 prepared?

12 A Yes. He was told that.

13 Q Okay. And if you -- you knew that Mr. Vergudo had been in
14 custody with the County since June or July, correct?

15 A I don't recall the exact date of when he was --

16 Q Sometime in the summer?

17 A Yes.

18 Q I mean, you knew that your witness who had prompted you to
19 begin tailing my client 24 hours a day had been taken into
20 custody by the County Attorney's Office here?

21 MS. BROOK: Objection. Form of question.

22 THE COURT: Sustained.

23 BY MR. MAYNARD:

24 Q You knew that Mr. Verdugo had been taken into custody
25 sometime in the summer of 2015?

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1 A Yes. I knew, yes.

2 Q Okay. And it just so happens that it's either the day of
3 or the day before you meet with him in December is the first
4 time you prepare this 302 concerning your observations that
5 would be exculpatory for him?

6 A Yes. I didn't know the details of why he was arrested.

7 Q Did the FBI --

8 Strike that.

9 Can the witness be shown Exhibit 196? May I
10 approach, Your Honor?

11 THE COURT: Yes.

12 BY MR. MAYNARD:

13 Q Agent Whitson, can you tell the jury what 196 is?

14 A Yes. 196 is a grand jury return from BMO Harris Bank for
15 bank accounts belonging to Abdul Malik Abdul Kareem.

16 Q And these are the -- these bank accounts have been
17 reviewed or forensically reviewed by an accountant for the
18 FBI?

19 A Yes.

20 Q And these are the bank records that you looked at when you
21 said that there was some unusual activity?

22 A Yes.

23 Q And these were the records where he had placed in a
24 \$10,000 deposit and then within days after that took on
25 November 13 --

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1 THE COURT: Excuse me. I don't think this is in
2 evidence.

3 MR. MAYNARD: Sorry. I move for the admission of
4 Exhibit 196.

5 THE COURT: Is there any objection?

6 MS. BROOK: No objection.

7 THE COURT: 196 is admitted.

8 (Exhibit No. 196 admitted in evidence.)

9 BY MR. MAYNARD:

10 Q Okay. On what would be about the sixth or seventh page of
11 the document, these are the records that show a \$10,000
12 deposit. And then on November 13th there was a \$5,000
13 withdrawal?

14 A Yes.

15 Q Correct?

16 A Yes.

17 Q And you thought that was unusual?

18 A Not just because of those two facts, but, yes.

19 Q Okay. Can the witness be shown Exhibit 559.

20 Agent Whitson, have you ever seen Exhibit 559 before?

21 A I don't recognize it, but.

22 Q Does the yellow marker with the number 22 on it look
23 familiar to you?

24 A I mean, that looks like a marker that would be used at a
25 scene, but.

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1 Q Do you know whether or not this is a copy of a notebook
2 that was taken from Mr. Abdul Kareem's vehicle when he was
3 arrested by the FBI on June 10th of 2015?

4 A I don't.

5 Q Okay. And I take it then, even though the notebook is
6 turned to a particular page and photographed, you don't recall
7 ever seeing this?

8 A I don't.

9 Q And so, therefore, you would have not done any
10 investigation concerning the information that is found on
11 Exhibit 559?

12 A Well, there is -- I did some investigation related to some
13 things that are written there.

14 Q But how would you have done that without looking at that?

15 Did you do a background on the truck that he had
16 purchased?

17 A Well, no. There's information there that looks like
18 information that came from other things and so I did
19 investigative efforts on those other things.

20 Q Did you do any investigation to determine when Mr. Abdul
21 Kareem had purchased the box truck, the 1998 box truck?

22 A Yes.

23 Q And what did you do?

24 A I checked with records with the Motor Vehicle Department.

25 Q When did you do that?

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1 A I did that yesterday.

2 Q That was the first time?

3 A Yeah. That I did -- that I did it, yes.

4 Q Are you aware of anybody else having done it?

5 A No.

6 Q Did you look -- did you look at Exhibit 559 over the
7 evening?

8 A No.

9 Q Okay. What did you find from the Motor Vehicle
10 Department?

11 A The records indicated that a GMC truck was purchased by
12 the defendant -- or I should say not purchased, but registered
13 with the State in or about January 20th, I believe, so January
14 20th of 2015.

15 Q Okay. Did you go back to look at any of the documents
16 that the FBI had recovered to determine if there was any sort
17 of receipt for the purchase of that truck?

18 A Yes. I looked.

19 Q And you didn't find 559?

20 A No, I did not. I did not see anything that looks like
21 this.

22 Q Okay. Can I have the witness have Exhibits 242 and 243
23 and may I approach?

24 THE COURT: The clerk?

25 MR. MAYNARD: No. I don't need to. I'm sorry.

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1 Is 242 in evidence?

2 THE COURT: It is not. Only 243 is this evidence.

3 BY MR. MAYNARD:

4 Q Do you have 243 in front of you?

5 A Yes, I do.

6 Q Have you seen this photograph before?

7 A It looks familiar.

8 MR. MAYNARD: If it's in evidence, can I publish it?

9 THE COURT: Yes.

10 BY MR. MAYNARD:

11 Q Do you know where the FBI found this photograph?

12 A I don't recall for this one.

13 Q Do you know who this is?

14 A I think so. The picture is kind of hard to see.

15 Q Who do you believe it is?

16 A But it looks like Nathaniel Soofi, which is Nadir Soofi's
17 son.

18 Q Okay. And did the FBI interview Nathaniel Soofi?

19 A Yes.

20 Q In this case we've heard from three witnesses so far that
21 said they knew about the Muhammad Drawing Contest before it
22 occurred. Would you agree with that?

23 A Could you say that again?

24 Q Yeah. We heard -- Mr. Verdugo said he had heard about the
25 Muhammad Drawing Contest before it occurred.

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1 A Yes.

2 Q And the two juveniles, Carlos and Juan, both said they had
3 heard about that drawing contest before it occurred?

4 A Yes.

5 Q Okay. Did anyone else in your investigation, anyone tell
6 you that they had heard of that contest before it occurred
7 other than those two individuals -- those three individuals?

8 A No, not that I recall.

9 Q Do you recall whether or not Mr.-- the young boy in the
10 photograph indicated that he knew about the contest before --

11 MS. BROOK: Objection. Hearsay as to any content of
12 conversations.

13 THE COURT: Sustained.

14 BY MR. MAYNARD:

15 Q Okay. Did you participate in the preparation of the
16 indictments in this case?

17 A What do you mean?

18 Q Did you review them? Approve them?

19 A No. I wouldn't, no. I would provide information that
20 they may have used in crafting that.

21 Q Are you aware how many indictments there are in this case?

22 A Yes. I believe so.

23 Q Okay. The first indictment was when?

24 A It would have been on June 10th of 2015.

25 Q So can you explain to the jury what an indictment is?

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1 A Well, an indictment is where the case is presented
2 before -- and in this case it was a grand jury -- and so the
3 case is presented before the grand jury. And then the grand
4 jury votes on whether they believe there is sufficient cause
5 to justify indicting that individual or charging them with
6 those offenses.

7 Q And at a later date there was a superseding indictment
8 that was filed; is that correct?

9 A Yes.

10 Q And a superseding indictment is one that adds new charges?

11 A Yes.

12 Q And then at a later date there was a second superseding
13 indictment that was charged -- filed?

14 A Yes.

15 Q And that last one is the one that is here in front of this
16 jury, correct?

17 A Yes.

18 Q And that one charged my client for the first time with
19 Conspiracy to Provide Material Support to a Foreign Terrorist
20 Organization; is that correct?

21 A Yes.

22 Q And that was done on or about September 22nd of 2015?

23 A That sounds right.

24 Q Were you happy when it was -- the government brought that
25 second superseding indictment?

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1 A No.

2 Q No?

3 A I don't think "happy" is a right way to describe that.

4 Q Didn't you think this was a fantastic thing for the
5 government to do?

6 A To do what?

7 Q Charge him with Conspiracy to Provide Material Support to
8 a Foreign Terrorist Organization?

9 A No. I didn't think that was a happy thing to do.

10 Q Could you show the witness Exhibit 558.

11 Agent Whitson, have you seen Exhibit 558 before?

12 A I have not seen this exhibit.

13 Q You have seen it before, correct?

14 A I recognize it that it's an e-mail.

15 Q There was an e-mail that was written to you by somebody at
16 the U.S. Department of Justice, correct?

17 A Yes.

18 Q And then you wrote an e-mail back to that person and
19 others, correct?

20 A Yes.

21 MR. MAYNARD: Okay. I would move for the admission
22 of Exhibit 558.

23 MS. BROOK: No objection.

24 THE COURT: 558 is admitted.

25 (Exhibit No. 558 admitted in evidence.)

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1 BY MR. MAYNARD:

2 Q Agent Whitson, when you were told that the FBI -- or the
3 U.S. Attorney's Office here in Phoenix, Arizona, had been
4 approved for conspiracy to file -- conspiracy to provide
5 material support as outlined in your e-mail, your response
6 was:

7 "Fantastic news. Thank you or three -- thank you all
8 three of you for all the hard work. I know there is going to
9 be a lot of people in our organization who will be very
10 pleased."

11 You thought in was fantastic, didn't you?

12 A I was thanking them for their hard work, yes.

13 Q And the people in your organization that you're talking
14 about is the FBI, correct?

15 A Yes.

16 MR. MAYNARD: Your Honor, I don't have any more
17 cross-examination, but I believe that Ms. Plomin has some.

18 THE COURT: Yes. This will be --

19 That was your last question?

20 MR. MAYNARD: Yes, ma'am.

21 THE COURT: Ladies and gentlemen, I made an exception
22 to my rule that only one lawyer could participate for each
23 side in the examination or cross-examination of a single
24 witness because Ms. Plomin has handled all of the
25 computer-related evidence in this case and Mr. Maynard has

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1 handled other evidence in the case.

2 So there's not going to be any repetition of anything
3 that Agent Whitson has already been asked, but now we're going
4 to focus this part of the cross-examination on the --

5 I said "computer," but more broadly, the electronic
6 communication.

7 MS. PLOMIN: Thank you, Your Honor.

8 **CROSS EXAMINATION**

9 BY MS. PLOMIN:

10 Q Good afternoon, agent.

11 A Good afternoon, ma'am.

12 Q Madame Clerk, can we please give Agent Whitson Exhibits
13 544 through 546 and 565.

14 And, Agent, did you also bring Exhibit 48 with you,
15 the physical exhibit? It has been admitted.

16 A I don't know if that's here. What is it, do you know?

17 THE COURT: It's described as a black LG flip phone.

18 THE WITNESS: I don't believe that's here in the
19 courtroom right now.

20 BY MS. PLOMIN:

21 Q Okay. Okay.

22 Now, Agent Whitson, I want to first direct your
23 attention to Exhibit 565. Do you have that in front of you?

24 A Yes.

25 Q And do you recognize Exhibit 565 or what's depicted in

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1 Exhibit 565?

2 A It looks like text messages going back and forth from
3 users.

4 Q And do you recognize those as text messages from Abdul
5 Malik Abdul Kareem's cell phone, Maxwest cell phone?

6 MS. BROOK: Objection. Hearsay.

7 THE COURT: Overruled. He's being asked if he can
8 identify that that is what is in this document.

9 THE WITNESS: I'm trying to see its number.

10 MS. PLOMIN: And I would also offer it under the rule
11 of completeness, Your Honor.

12 THE WITNESS: I don't see his number on here, but it
13 looks like these may be text messages from Mr. Kareem.

14 BY MS. PLOMIN:

15 Q Okay. You reviewed the text messages from Mr. Kareem's
16 Maxwest cell phone, correct?

17 A Yes.

18 Q And those would have been very important to you in your
19 investigation here, correct?

20 A Yes.

21 Q And we're looking at the dates of May 1st, 2015, through
22 May 3rd, 2015. Were those significant dates in this
23 investigation?

24 A Yes.

25 Q And just -- what date was the Garland attack on?

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1 A The attack occurred on May 3rd.

2 Q And so May 1st would have been the Friday before the
3 attack, correct?

4 A Correct.

5 Q Now, if you could turn to the message on May 1st, 2015, at
6 5:21:07 p.m.

7 MS. BROOK: Your Honor, if I may, I think our
8 exhibits may be on the witness stand with Special Agent
9 Whitson.

10 Can I just approach to get our copy of these exhibits
11 so we can follow along?

12 THE COURT: You mean your copy of 565?

13 MS. BROOK: Right. Not the ones that the clerk has
14 given him, but some additional copies.

15 THE COURT: Okay.

16 MS. BROOK: Thank you.

17 Apparently, they're not up there.

18 BY MS. PLOMIN:

19 Q It's three lines up from the bottom of the first page.

20 A Yes.

21 Q Now, starting with that text message on May 1, 2015, at
22 5:21 p.m. and reading down from that, take a look at those and
23 see if you recognize those.

24 A Yes.

25 Q And where do you recognize those came from?

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1 A I believe these are text messages that came from
2 Mr. Kareem's phone to various people.

3 Q Okay. And is this a fair and accurate depiction of the
4 text messages that you reviewed from Mr. Kareem's phone from
5 May 1st, 2015, through May 3rd, 2015?

6 A Yes. It looks like a portion of those records.

7 MS. PLOMIN: Your Honor, I move to admit Exhibit 565
8 and publish.

9 THE COURT: Is there any objection?

10 MS. BROOK: Your Honor, we object to hearsay as well.

11 THE COURT: Overruled. 565 is admitted.

12 (Exhibit No. 565 admitted in evidence.)

13 BY MS. PLOMIN:

14 Q I want to direct your attention to the first text message
15 on May 1st at 5:21 p.m.

16 A Yes.

17 Q And could you read for us the text messages from May 1st,
18 2015, at 5:21 p.m. through May 2nd, 2015, 8:44:07 a.m. which
19 is on the second page.

20 THE COURT: Well, first, to the extent that you know
21 who the phone numbers are that they are going out to, can you
22 tell us that too?

23 THE WITNESS: I don't know that.

24 THE COURT: Okay.

25 THE WITNESS: So there's other individuals who would

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1 be more qualified to do this, the analyst that was in charge
2 of this project.

3 MS. PLOMIN: Okay. I'm just interested in what the
4 content of the messages are for the jury.

5 THE WITNESS: Okay.

6 Should I begin?

7 Q Yes.

8 A "Salaam walekum."

9 "Salam walaikum brother I'm inviting you to lunch
10 tomorrow I'm marinating the goat the night inshallah lunch
11 start at one."

12 Q Can I just stop you.

13 If you could read if they are outgoing or ingoing
14 text messages?

15 A Those two were out.

16 Q Okay.

17 A And then in:

18 "Walaikum salaam shukran for the invite but I finish
19 work at 3 and I think I'll have to watch my daughter, if I can
20 I'll try to make it."

21 And then out at 9:37 p.m.:

22 "Salam walaikum brother I'm cooking curry goat
23 tomorrow Jamaican style I invite you tomorrow at 1 o'clock."

24 At 9:41 out:

25 "Salaam walaikum I'm marinating the meat for the

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1 curry it start at 1."

2 At 9:41:56:

3 "Just let the brothers know."

4 And then keep going?

5 Q Yes. Please.

6 A 9:42 p.m. an in-message:

7 "Will be working."

8 9:42 p.m. in says:

9 "In sha allah."

10 9:45 p.m.

11 "Alright excited inshaAllah Ill try and make it. I
12 work but I'll see if I could leave for like 30 mints. How
13 early can i come."

14 And then 10:02 P.m. an in:

15 "What happened."

16 And then 5/2 at 8:43 a.m.

17 "You can come early as you want."

18 As an out message.

19 Q And what's the last message there, the next message?

20 A At 8:44 a.m. an in-message says:

21 "Koo."

22 Q Is that slang for "cool"?

23 A That would be my guess, yes.

24 Q All right. So over the course of your investigation
25 through these text messages, was it your understanding that

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1 Mr. Abdul Kareem was inviting some people over for lunch the
2 following day after May 1st?

3 A Based on these text messages alone, yes.

4 Q Okay. Now can you please look at Exhibit 544, 545, and
5 546.

6 A Yes. I'm set.

7 Q So you have reviewed Exhibit 544 through 546?

8 A Yes.

9 Q Do you recognize what's depicted in those three exhibits?

10 A Yes.

11 Q And what is depicted in those exhibits?

12 A This is the LG 44G cell phone that was recovered from
13 Dallas. It was a phone that was believed to be utilized by
14 Elton Simpson. And these are screen captures where the CART
15 folks have gone in and taken pictures of the phone and what
16 they can see on the screen.

17 Q And you reviewed those screen captures, correct?

18 A Yes.

19 Q And let's start with Exhibit 544 --

20 Well, first I want to ask you. You said that this
21 phone was attributed to Mr. Elton Simpson; is that right?

22 A Yes.

23 Q I want to show you a document, Mobile Device Analysis
24 Report.

25 Do you recognize what that is?

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1 A I recognize what that report is.

2 Q And what is that report?

3 A That would be a cover sheet for a report that would come
4 from a CART examiner when they're examining a device.

5 Q And does this indicate what the cover sheet -- what device
6 this cover sheet is for?

7 A Yes, it does.

8 Q And which device is that?

9 A It shows it for the device with the telephone number
10 ending 8104.

11 And could I check my notes for something real quick?
12 Would that be all right?

13 Q Sure.

14 A Okay.

15 Q So isn't it true that this phone was actually attributed
16 to Mr. Nadir Soofi?

17 A Yes. I misspoke. This is actually a phone attributed to
18 Nadir Soofi according to this sheet.

19 Q Okay. And it was found in Mr. Soofi's car in Dallas -- or
20 in Garland, Texas?

21 A I don't recall its exact location, but I understand that
22 this is a phone that was recovered in Garland.

23 Q I'm going to turn your attention to Exhibit 545.

24 Your Honor, I ask for permission to admit Exhibit
25 545.

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1 THE COURT: Is there any objection?

2 MS. BROOK: No objection.

3 THE COURT: 545 is admitted.

4 (Exhibit No. 545 admitted in evidence.)

5 BY MS. PLOMIN:

6 Q Have you seen this text message before?

7 A Yes.

8 Q When did you first see this text message?

9 A I don't recall the first date I saw it, but at some point
10 during the investigation I looked through these.

11 Q All right. The report date is May 5th, 2015, so did you
12 review this pretty early on in your investigation?

13 A I don't recall exactly when I reviewed it, but I know I
14 reviewed it at some point in the investigation.

15 Q Okay. The phone number on the screen from 6025131626, do
16 you know whose phone number that is?

17 A I believe and I'm not a hundred percent certain.

18 Q Okay. Did you or any other agent interview a man by the
19 name of Christian Leon after viewing this text message?

20 A Yes.

21 Q Do you know if that phone number belongs to Mr. Leon?

22 A I believe that is the case, but I don't know with a
23 hundred percent certainty that that's his phone number, but I
24 believe that.

25 Q All right. And can you read the content of the text

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1 message, the date and time?

2 A Yes. It says -- there was a message sent from phone
3 number ending in 1626. It says:

4 "Do you still want to get the AK-74?"

5 It was sent on January 6th of 2015 at 7:01 a.m.

6 Q And that was an incoming message to the phone attributed
7 to Mr. Soofi, correct?

8 A Yes.

9 Q And after that text message at 7:01 a.m., these were --
10 Well, let me actually back up.

11 This report that you are viewing, a portion of the
12 report, is it essentially screenshots of the various text
13 messages and phone calls that occur from a phone?

14 A Yes.

15 Q And so after this message came in to Mr. Soofi's phone,
16 "Do you still want to get the AK-74?" there were several calls
17 back and forth between this number ending in 1626, correct?

18 A I don't know that there were several calls back and forth
19 between the numbers.

20 Q Why don't you look at the rest of the exhibit to see if it
21 refreshes your recollection.

22 A Okay. I have reviewed it.

23 Q All right. And were there several calls following this
24 text message that came in to Mr. Soofi's phone?

25 A Yes. It looks like there were four.

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1 Q Were there actually five?

2 A I count four.

3 Q Including page 2?

4 A No. I actually do. See a fifth because there's two lines
5 on the same one, so, yes, there were five.

6 Q Okay. I'm putting page 2 of the exhibit on the screen for
7 the jury.

8 What does that indicate to you?

9 A This is -- this phone received a call from 1626, so from
10 6025131626, on January 6th at 7:41 a.m. and that the call
11 lasted approximately 4 minutes and 10 seconds.

12 It's hard to read a little bit, but I can't see if
13 that's a 4 or a 1 on this screen. Looks like one minute. It
14 looks like one minute and 47 seconds.

15 Q Well, let's go back.

16 The first received call from 1626 about the text
17 message about the AK74 lasted for 4 minutes and 10 seconds; is
18 that right?

19 A Yes.

20 Q Okay. And the second page indicates another dialed call
21 at 8:18 a.m. the same morning, correct?

22 A Yes.

23 Q And then there were two more received calls at 8:53 a.m.
24 and 9:08 a.m. the same morning of that text message, correct?

25 A Yes.

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1 Q And finally, there was a dialed call at 9:14 a.m. on
2 January 6, 2015, to the phone number that texted about the
3 AK74 at 9:14 a.m., correct?

4 A Yes.

5 Q And you said after viewing these text messages, you or
6 other agents from the FBI went and interviewed Christian Leon,
7 true?

8 A Yes.

9 Q And have you reviewed the 302s relating to that interview?

10 A I did.

11 Q All right. Were those 302s important to you that this
12 person was communicating with Mr. Soofi about buying an AK74?

13 A Yes.

14 Q Okay. So the interviewers were Robert Tobias and Joseph
15 Mulligan. Do you know who that is?

16 A Yes. I know who they are.

17 Q Who do they work for?

18 A They are special agents with the FBI.

19 Q Did you direct them to go and conduct that interview?

20 A I did not direct them to conduct that interview but
21 someone did.

22 Q As the case agent investigating Mr. Abdul Kareem at the
23 time, you were not the person who directed them to go
24 interview somebody else who's communicating with them about
25 AK-74s?

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1 A No. At that time, remember, the Simpson/Soofi
2 investigation had their investigators.

3 And so all the devices that came from the
4 Simpson/Soofi investigation, that would have been a lead
5 generated by those agents. So it would have been those agents
6 that asked them to go conduct that interview and not me.

7 Q So you weren't following a lead that pointed in a
8 direction other than to Mr. Abdul Kareem in purchasing or
9 selling the AK-74?

10 A What do you mean by that?

11 Q You were the case agent for Mr. Abdul Kareem in May of
12 2015, true?

13 A Beginning May 8th, yes.

14 Q Beginning May 8th.

15 And the interview of Mr. Leon was on May 20th of
16 2015. Does that sound right?

17 A That sound right.

18 Q And you had already interviewed Mr. Abdul Kareem on
19 May 5th, correct?

20 A Yes.

21 Q And on May 12th you spoke to him?

22 A Yes.

23 Q And you had already spoken to Mr. Verdugo several times?

24 A Yes.

25 Q And the FBI was following Mr. Kareem 24 hours a day?

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1 A Yes.

2 Q All right. And you were suspicious of Mr. Kareem for
3 providing the guns that Mr. Soofi and Mr. Simpson took to
4 Garland, Texas, correct?

5 A I don't know if I knew that yet at that time.

6 Q Okay.

7 A I don't know -- I don't think I knew that fact yet.

8 Q You knew that fact?

9 A No. I don't think I knew that fact yet. When the
10 interviews of Mr. Leon took place, I don't think I knew that
11 yet.

12 Q Well, you didn't think you believed that yet; is that
13 right?

14 A No. I said I didn't know that fact that he provided those
15 weapons until after that date, I believe. So the first
16 indication came from the interview of Sergio Martinez-Chavez
17 and that occurred on May 20th.

18 Q Okay. So you didn't know for sure. You weren't there.

19 You're saying it's the first time your investigation
20 led you in that direction was at that time?

21 THE COURT: You're arguing -- that's argumentative.

22 He says it the way he says it. You say it a
23 different way.

24 BY MS. PLOMIN:

25 Q Okay. The interview with Mr. Leon, did you learn in the

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1 course of your investigation that Mr. Leon was, in fact,
2 selling an AK-74 in January of 2015?

3 A I did not learn that. He claimed he had sold it in
4 October of 2014.

5 Q Okay. And then he was interviewed again on May 28th of
6 2015. Did you review that 302?

7 A I don't recall a second one.

8 Q I'm putting a document on the screen to refresh your
9 recollection as to whether or not you reviewed the interview,
10 the May 28th interview of Mr. Leon.

11 A I don't recall if I have seen this one or not, but it
12 contains some of the same information from the other one.

13 Q All right. So you were not aware that Mr. Leon told the
14 FBI that he was selling an AK-74 in January of 2015?

15 A I don't remember seeing this.

16 Q I'm just asking.

17 So you're not aware testifying today --

18 THE COURT: He just answered the question,
19 Ms. Plomin.

20 BY MS. PLOMIN:

21 Q And during the course of your investigation, did it become
22 clear -- did you learn that Mr. Leon was selling an AK-74 of
23 the same caliber and same make that was found in Garland,
24 Texas?

25 A I learned that he -- yes, that he had sold -- he claimed

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1 he had sold one that matched those same things, yes.

2 Q All right. And what was the make and the caliber of the
3 AK-74 that was found in Garland, Texas?

4 A It was an AK-74, 5.45x39 millimeter caliber weapon.

5 Q And who was it made by?

6 A Elk River Tool and Die.

7 Q And that was the same weapon Mr. Leon said he was selling
8 in January?

9 A That same kind.

10 Q Now, after learning this information about Mr. Leon, did
11 you investigate his Backpage account to determine who or with
12 whom he communicated about this AK-74?

13 A There were other, so I did not personally, no.

14 Q And did the FBI?

15 A It's my understanding that they did, yes.

16 Q They reviewed his Backpage account?

17 A I don't know that they reviewed his Backpage account.

18 Q Did you do a -- ask for a consent or do a search warrant
19 for his e-mails?

20 A I did not.

21 Q Did the FBI do that?

22 A Not that I know of.

23 Q Did you obtain a copy of his cell phone records? Did you
24 ask for consent or write a search warrant for that?

25 A I did not.

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1 Q Did the FBI do that?

2 A I don't believe -- what's that?

3 Q Did the FBI do that?

4 A I don't know if we did.

5 Q Did you interview anybody that Mr. Leon knew to determine
6 whether he had a connection to Mr. Soofi and Mr. Simpson?

7 A I personally?

8 Q Yes.

9 A I did not personally that I know.

10 Q Did the FBI do that?

11 MS. BROOK: Objection. Speculation.

12 THE COURT: Overruled. You may answer if you know.

13 THE WITNESS: I don't know if the FBI did that.

14 BY MS. PLOMIN:

15 Q What did you do to follow up with Mr. Leon and the text
16 message you found in Mr. Soofi's phone?

17 A Me personally?

18 Q The FBI that you know of?

19 A Well, from -- so from the two -- it sounds like they did
20 an initial interview and then interviewed him again to see if
21 there was any more to it or any information we could use and
22 determined there was not.

23 Q All right. And did you -- did the FBI do anything to
24 follow up on that interview or those interviews?

25 A Not that I know of.

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1 Q All right. Could you look at Exhibit 546, please.

2 A Yes.

3 Q Have you seen Exhibit 546 before?

4 A Yes. I recognize it.

5 Q And that came from Mr. Soofi's phone as well?

6 A Yes. I believe so.

7 Q Your Honor --

8 And is this an accurate depiction of what you saw in
9 the report from Mr. Soofi's phone?

10 A Yes.

11 MS. PLOMIN: Permission to admit and publish, Your
12 Honor.

13 THE COURT: Is there any objection to 546?

14 MS. BROOK: No objection.

15 THE COURT: 546 is admitted.

16 (Exhibit No. 546 admitted in evidence.)

17 BY MS. PLOMIN:

18 Q What date was this text message on?

19 A It's January 5th of 2015.

20 Q And 10:46 p.m.?

21 A Yes.

22 Q And the content says "\$700," correct?

23 A Yes.

24 Q And the phone number who the message is from ending in
25 7302, did the FBI determine whose phone number that was?

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1 A Yes.

2 Q And whose phone number was that?

3 A It was an individual named Baiz, I believe. B-A-I-Z.

4 Q Ali Biaz?

5 A Yes. That's right.

6 Q And did the same agents who interviewed Mr. Leon interview
7 Mr. Biaz?

8 A I'm not sure who conducted the interview.

9 Q Did you review a 302 from a May 20th interview from
10 Mr. Ali Biaz?

11 A I don't recall the date, but I did review an interview of
12 him.

13 Q Would it refresh your recollection to look at the 302 for
14 the date?

15 A Yes.

16 Q Does that refresh your recollection?

17 A Yes.

18 Q And what date was that interview on?

19 A It was on or about May 20th of 2015.

20 Q And in your review of this 302, did you learn in the
21 course of your investigation that Mr. Biaz was selling an
22 AK-47 in January 2015?

23 A Yes.

24 Q And can you tell us a little bit about Mr. Biaz?

25 Have you ever interviewed him?

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1 A No.

2 Q And did you learn how much Mr. Biaz was asking -- how much
3 money Mr. Biaz was asking for the sale of that AK-47 in
4 January of 2015?

5 A I did.

6 Q How much was that?

7 A He was asking \$700 for his AK-47.

8 Q All right. And Mr. Biaz -- did you learn that he actually
9 had seen Mr. Simpson shopping in his parents' market?

10 A That he had -- when?

11 Q He had seen Mr. Simpson before.

12 A At some point in the past or something?

13 Q Yes.

14 A I'm not aware of that, but.

15 Q Do you know if he was shown pictures of Mr. Simpson and
16 Mr. Soofi to see if he knew them?

17 MS. BROOK: Your Honor, I object to hearsay and
18 speculation.

19 THE COURT: Sustained.

20 BY MS. PLOMIN:

21 Q So with respect to Mr. Biaz, when did you learn about this
22 information in Mr. Biaz's interview on May 20th, 2015?

23 A This was another one of those that as it was -- the
24 investigation was going on, I believe it came to my attention
25 and I saw it.

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1 Q All right. Any idea when you learned of it?

2 A I don't recall the exact date.

3 Q Do you think it was in 2015?

4 A Yes.

5 Q All right. And once you learned that Mr. Biaz had been
6 communicating with Mr. Soofi about an AK -- well, about \$700
7 and he was selling an AK-47, what did you do to investigate
8 him?

9 A Well, when I reviewed the 302 of his interview, I
10 determined there was no need based on the information in that
11 302.

12 Q Okay. So you didn't review any of his accounts or his
13 financial records, anything aside from his word?

14 A No. Yeah. Based on the description of the weapon he was
15 selling, I determined that there was no need.

16 Q All right. And that description came from him, correct?

17 A From the investigators there who were filling out the --
18 who were drafting the report.

19 Q Right. But you didn't have any definitive evidence? You
20 just had what he told them, correct?

21 A That's what I -- yes.

22 Q And Mr. Leon and Mr. Biaz both denied selling those
23 weapons to Mr. Soofi, right?

24 A Yes. Both denied that.

25 Q And you decided to take their word for it and not

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1 investigate any further; is that right?

2 MS. BROOK: Objection, Your Honor. Asked and
3 answered.

4 THE COURT: Sustained.

5 MS. PLOMIN: I don't have anything further.

6 THE COURT: Ms. Brook.

7 MS. BROOK: Thank you.

8 **REDIRECT EXAMINATION**

9 BY MS. BROOK:

10 Q Good afternoon.

11 A Good afternoon, ma'am.

12 Q So let's start off right where defense counsel left off in
13 talking about Mr. Leon and Mr. Biaz.

14 Defense counsel has asked you about tracking down
15 prior owners of weapons in order to determine the source or
16 derivative purchase of the weapons found in this particular
17 case.

18 A Yes.

19 Q What's a trace report?

20 A A trace report is an official report produced by the ATF.
21 And, essentially, it's an official report that lists the
22 current registered owner of a firearm.

23 Q So does it show exactly who the current owner of a firearm
24 may be?

25 A Not necessarily.

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1 Q So can you explain that?

2 A Yes. So in some states, Arizona included, if a private
3 owner sells a handgun to another private owner, there's no
4 record that's required to be kept.

5 And so the records that ATF has are records that are
6 given, you know, when this firearm is originally purchased.
7 So typically, for people in Arizona, that would be the person
8 who purchased it from a gun store or from a commercial
9 enterprise of some sort.

10 They would produce that report that ATF would have,
11 but then there would be no record of who they sold it to or
12 who that person had sold it to and on and on.

13 Q So in those cases where there are not official trace
14 reports because the keep weapon itself wasn't purchased
15 through a federal firearms licensee or something where those
16 reports are generated, how might you determine where a weapon
17 came from?

18 A Well, there's two ways, I guess.

19 One, is if the person who had the weapon told you who
20 they got it from, obviously, you could determine.

21 But the only other way is to basically just start
22 from the original purchaser or the one you have to go
23 interview them to see if they were the ones that provided it
24 or sold it directly to the person who last it now.

25 If not, maybe they'll give you a description of the

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1 person they did sell it to. Then you need to go find that
2 person and interview them and on and on and on.

3 And so depending how long that chain is, it can
4 obviously get a little convoluted.

5 Q So how many weapons did ATF do trace reports on in this
6 particular case?

7 A Eight.

8 Q And did you review those reports?

9 A Yes, I did.

10 Q Did you attempt to trace the path of these weapons to
11 Simpson and Soofi and also the two weapons to the defendant?

12 A Yes, I did.

13 Q Did you have any success?

14 A On two accounts.

15 Q What were those?

16 A So, one of the ATF reports listed Nadir Soofi as the
17 original owner, so obviously, we were able to determine that
18 that 9 millimeter high point that was discovered in Garland,
19 that was originally purchased by Nadir Soofi.

20 The other one we had success on was the 38 Special
21 that was found in Mr. Kareem's moving truck that he, you know,
22 admitted that was his.

23 That gun, the original owner, was a man named Sean
24 Raper. He was an individual that testified here. And so when
25 we went out and interviewed Mr. Raper, he provided a detailed

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1 description of who the person was he had sold it to. Without
2 us talking to him, he mentioned details about Mr. Kareem that
3 we know he wouldn't have known.

4 MR. MAYNARD: That's beyond the scope -- it's
5 hearsay.

6 THE COURT: I think he stopped answering when you
7 started objecting and Ms. Brook is going to ask a new
8 question.

9 BY MS. BROOK:

10 Q So let's go back to that 9 millimeter high point that you
11 talked about and you said that there was a trace history
12 tracing it back to Nadir Soofi.

13 That was purchased from a gun store, an FFL?

14 A Yes.

15 Q In what year?

16 A It was in or about 2010.

17 Q And then the other trace report was the 38 Special that
18 Sean Raper had testified about selling it to the defendant.

19 A Yes.

20 Q So with the other six weapons, what did you do to take
21 steps to identify if you could find the person that sold those
22 weapons?

23 A Yes. So as soon as we received those trace reports, leads
24 were sent out to investigators in the areas where those
25 original owners resided and interviews were conducted to see

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1 if they could determine, first of all, whether that original
2 owner had directly supplied the weapon.

3 Or, like I had explained before, whether that
4 original owner had given it to someone else. And then if that
5 "someone else" was able to be identified, additional leads
6 were sent to go interview that someone else and so on.

7 Q Were you also able to look at text messages in this
8 particular case and attempt to track down if a sale of a
9 weapon happened based upon some text messages that you saw?

10 A Yes.

11 Q Ms. Plomin showed you a couple of different text strings.
12 One was Exhibit No. 545. Was this the conversation with
13 Mr. Leon?

14 A Yes.

15 Q And based upon the 302 that was shown to you in your
16 investigation in this particular case, did the followup with
17 Mr. Leon lead to any useful evidence in this case?

18 A It did not lead to any useful evidence.

19 Q Can you explain that?

20 A Yes. So Mr. Leon's description of the person he'd sold
21 the weapon to changed. The type of vehicle that was
22 described, I think -- I believe it was a red Jetta was the
23 person had driven in. And so based on all that information,
24 there was no conclusive way for us to get any investigative
25 value from the information he was providing us.

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1 Q And in this case are you aware of Elton Simpson, Nadir
2 Soofi, or the defendant driving a red Jetta?

3 A I am not.

4 Q Additionally, the visual description of the individual he
5 sold that AK to, did it in any way match any of the suspects
6 in this case?

7 A It didn't. And the other thing from the text messages, we
8 couldn't tell that a sell had ever actually taken place. So
9 if we had, you know, evidence in there where, "hey, thanks for
10 the sale, it was a pleasure doing business," you know, a
11 message of that sort, we could have drawn more conclusions.

12 But based on the text messages we have, we couldn't
13 confirm that a sale had taken place from them either way.

14 Q These particular text messages that we have seen and that
15 are admitted, were they consistent with evidence that you have
16 seen in this case regarding Nadir Soofi's interest in
17 purchasing an AK-style weapon in January of 2015?

18 MR. MAYNARD: Objection to the form of the question.

19 THE COURT: Overruled. You may answer.

20 THE WITNESS: They are consistent.

21 BY MS. BROOK:

22 Q Defense counsel also showed you Exhibit No. 546.

23 Based upon your investigation, were these the
24 communications, the text messages recovered with Mr. Biaz?

25 A Yes.

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1 Q Additionally, based upon the timing of these particular
2 text messages, what probative value did they have in your
3 investigation based upon the requests or what the individual
4 Mr. Soofi was looking for?

5 A I'm sorry. Could you repeat the question?

6 Q Did they have any value, the text messages, in terms of
7 what Nadir Soofi was looking for in January of 2015?

8 A Yes.

9 Q How so?

10 A Well, as -- I know Ali had testified there's a weapon that
11 was purchased for \$700. So, obviously -- and we had
12 information to believe that weapons were purchased around that
13 date.

14 So clearly, we were interested in anything that would
15 come up that would indicate who that potential seller was.

16 Q I want to talk about Mr. Biaz and the report that he gave.
17 Based upon the 302 and the information you had about the
18 communications back and forth with Mr. Biaz, was there any
19 indication that a sale was made?

20 A There was no indication that a sale was made.

21 Q And, additionally, the AK-style weapon that Mr. Biaz was
22 attempting to sell, what make was that?

23 A I can't recall the full name but it was Century.

24 Q I'm going to place on the overhead a report which is not
25 admitted into evidence. Does that refresh your recollection?

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1 A That does.

2 Q And, specifically, what was the weapon that Mr. Biaz was
3 attempting to sell back in January of 2015?

4 A So the AK that he was selling was called a Century Arms,
5 so Century Arms brand AK-47.

6 Q And is that in any way consistent with any of the weapons
7 involved in this case?

8 A It is not. They are not that brand.

9 Q I want to turn next to Exhibit No. 565 which defense
10 counsel was asking you about. I'm going to place them on the
11 overhead.

12 Are these the text messages from the defendant's
13 phone, that Maxwest phone, on May 1st and May 2nd?

14 A Yes.

15 Q And can you tell us what is -- what was Elton Simpson's
16 phone number during this time period?

17 A I believe the last four were 8392, I believe.

18 Q And in cross-referencing those last four digits, do you
19 see any contact with Elton Simpson on May 1st or May 2nd?

20 A I don't. Could you please slide it up?

21 MS. BROOK: May I, Your Honor, just bring him the
22 physical exhibit?

23 THE COURT: He actually has it.

24 MS. BROOK: Oh, great. All right.

25 THE WITNESS: I do not see any contacts with that

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1 number.

2 BY MS. BROOK:

3 Q Defense counsel asked you about a lunch invitation.

4 Again, I'm just turning to page 2. So page 2 takes
5 us down to the middle of May 2nd. Again, do you see that
6 number?

7 A I do not.

8 Q And next, I'm going to focus in on that first text message
9 that defense counsel asked you about, the invitation that went
10 out, and you don't see any text messages to Elton Simpson?

11 A I don't see any to Elton Simpson.

12 Q Was the invitation for dinner or lunch?

13 A It's for one o'clock.

14 Q A meal at one o'clock?

15 A A meal at one o'clock.

16 Q And just for clarification, that was one o'clock on
17 Saturday, the 2nd?

18 A Yes.

19 Q Based upon review of text messages in this case, have you
20 seen text message exchanges in the previous day, earlier, and
21 I guess on April 30th back and forth with Elton Simpson and
22 the defendant?

23 A Yes.

24 Q And what was the nature of those communications?

25 A I recall there being approximately, you know, six calls

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1 back and forth, two of which were seven-minute duration calls
2 between the two on the evening of the 30th.

3 Q And do you recall what the purpose of those messages were,
4 the text messages?

5 A I don't recall off the top of my head.

6 Q I'm going to place on the overhead what has already been
7 admitted and published as Government's Exhibit No. 478.

8 In looking at these messages, what have you inferred
9 was the time where dinner with Elton Simpson was set up?

10 A It would have occurred between 7:12 and 9:12 p.m.

11 Q On what day?

12 A On April 30th, which was a Thursday.

13 Q Okay. And, additionally, can you read for us the message,
14 the 9:12 message on May 1st of 2015?

15 A "Wa Alaykim salam wrwb. Sorry about yesterday for the
16 punches and for today akhi. I won't be able to make it. I
17 know you hooked it up though. LOL."

18 Q Defense counsel has asked you a number of questions about
19 interviewing individuals and witnesses in this particular
20 case. And is it routine for the FBI to record interviews for
21 people who are not considered to be suspects?

22 A No.

23 Q Describe for us what is a noncustodial interview?

24 A A noncustodial interview is a voluntary interview. It's
25 one where someone comes in or meets us voluntarily. They can

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1 leave at any time. They can -- and end the interview at any
2 time. So just completely voluntary.

3 Q And what's a consensual interview?

4 A A consensual is essentially the same thing. So it
5 would -- we've asked them, "May we interview you." And the
6 person has said, "Yes you may." And then an interview takes
7 place.

8 Q Is there a policy within the FBI about when an interview
9 should be recorded?

10 A Yes.

11 Q What's that policy?

12 A Whenever we're doing what's called a custodial interview,
13 the policy is there is a presumption that it will be recorded.

14 So a custodial interview, obviously, is if someone is
15 under arrest or they're essentially not free to leave, that
16 they're being, you know, brought in in that sense. That's a
17 custodial interview. So in that case there is a presumption
18 we will record.

19 However, with the policy, obviously, there are still
20 exceptions to that presumption, various circumstances where it
21 wouldn't. But the general presumption is that it will be
22 recorded.

23 Q Is it a mandatory rule that it must be recorded?

24 A It's a presumption. Because there's exceptions to it, I
25 don't know if I would say it's a mandatory rule.

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1 It is the general -- I can't think of any situations
2 where one of the exceptions has been used, so.

3 Q So what is the rule as it relates to consensual
4 interviews?

5 A For consensual or those voluntary interviews, our policy
6 says you may record.

7 Q Okay. Again, is it a rule that you must record?

8 A No. And it's generally not -- in a noncustodial
9 interview, it would generally not be the practice to record an
10 interview.

11 Q Can you explain that?

12 A Yes. So FBI agents and other employees too at the FBI
13 conduct interviews all the time. And so most of those
14 interviews, they can range from people just coming into the
15 office to tell us about things they're concerned with. They
16 may be us going out into the community and meeting with
17 community leaders and having interviews and discussions to a
18 wide range of things.

19 And so most of those interviews are just simply not
20 going to be recorded.

21 Instead, agents are trained at the FBI -- you know,
22 FBI Academy at Quantico on how to conduct interviews, to
23 remember them and take notes and that sort of thing. And then
24 to memorialize those interviews when needed to on what I
25 described earlier as an FD 302 which is our form.

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1 Q So your interview with the defendant on May 5th of 2015,
2 was -- what type of interview was that?

3 A That was a noncustodial interview, so voluntary interview.

4 Q We have heard testimony from you about how you, Special
5 Agent Taylor, and Detective Nash worked together to attempt to
6 record that interview.

7 Before the interview happened, did you tell the
8 defendant that it was going to be recorded?

9 A I did not.

10 Q The recording equipment itself, was it -- was it set up in
11 a place where it couldn't easily be seen?

12 A Yes. It was concealed.

13 Q Defense counsel has asked you about --

14 THE COURT: I just wanted to follow up because I
15 think one of the juror's questions was: Why would you
16 surreptitiously record a noncustodial interview?

17 THE WITNESS: Okay. Well, that -- so again, it's
18 abnormal to do that.

19 But in a case like this, I think, where, you know, an
20 attack had taken place and people were coming in who may be
21 associates and to kind of take an extra step because of the
22 magnitude that there was a lot of people involved, obviously,
23 I wasn't a case agent for that case. I was just someone
24 assisting them at that point.

25 And so there was that added benefit of capturing a

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1 recording so then that agent on those cases could actually go
2 in and listen to that recording again as well and then also
3 they could read my report.

4 But for all of those reasons, and again, in this
5 case, there were case agents on the Simpson/Soofi matters and
6 that was kind of their call to make that they wanted to have
7 all their interviews recorded.

8 And so that's why initially you'll see a lot of the
9 interviews conducted towards the beginning of the
10 investigation are all recorded because that was kind of a
11 general mandate that came down from those case agents.

12 Obviously, then later as the investigation moves,
13 then that judgment call of whether or not a recording is
14 needed would have fallen to me then once it got to the part
15 for my investigation, if that makes sense.

16 THE COURT: But why surreptitious?

17 THE WITNESS: Oh, sorry, Your Honor. That was your
18 question.

19 So the reason to do it surreptitiously, obviously,
20 there's times when a recording will be put on the table and
21 you can record and interview that way.

22 But my experience, just like taking notes in front of
23 someone while you're talking to them, it's extremely
24 distracting. And I think, again, you know, our job is to get
25 at the truth, whatever that truth is, we want the truth.

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1 And so if there's something we can do that can put
2 people at ease and we can just get the truth, whatever that is
3 from them, then I think that's the best policy.

4 And so in these kind of circumstances, obviously, if
5 I told them, you know, in an interview like that that it was
6 being recorded, I think it would be less likely that I would
7 get completely honest answers versus if I told them that it --
8 if I didn't tell them either way whether it was being
9 recorded.

10 BY MS. BROOK:

11 Q So the interview on May 5th of 2015, Detective Nash took
12 copious notes?

13 A Yes.

14 Q And I just want to talk about your practice. So you
15 mentioned before that oftentimes it's the case that you do
16 interviews and there isn't recording equipment set up
17 simultaneously.

18 Is it routine for you to write and draft reports
19 based upon notes --

20 MR. MAYNARD: Objection, Your Honor. This has been
21 asked and answered a number of times.

22 THE COURT: Sustained.

23 BY MS. BROOK:

24 Q I want to talk about the security camera.

25 Defense counsel asked you questions about a

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1 particular e-mail and communications with an individual within
2 the FBI who said they couldn't recover the information on the
3 SD card.

4 A Yes.

5 Q Are you aware of any agent ever requesting security camera
6 footage from your office's security camera in any
7 investigation?

8 A I have never heard of that ever being done in any
9 investigation.

10 Q Security camera footage, does it contain audio?

11 A No. It's video only.

12 Q Can you explain for us where exactly was the video camera
13 positioned in the interview room -- the interview room where
14 you conducted the interview with the defendant on May 5th?

15 A So our interview rooms have a small camera that's located
16 in the ceiling that kind of pans down on the room. It's a
17 wide-angle shot that's -- its intention is to capture all the
18 movement in the room.

19 Obviously, it's security, so it's primarily for
20 safety consideration. So to make sure you can see the entire
21 room and know if anyone is in that room and then also to be
22 able to see their behavior.

23 And then obviously, that feed is monitored in what we
24 call an Op Center so they can see what's going on. So should
25 we be in an interview room and something bad were to happen,

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1 there would be people watching that who could then send aid to
2 us. That's its purpose.

3 Q The angle itself, is it focused in on anybody's faces?

4 A No. No. So like I said, it's a wide-angle camera that's
5 kind of aiming down from the ceiling. It's mostly the top of
6 your head.

7 So kind of the way we're sitting, it would have been
8 coming down the back of our heads and kind of the top of
9 Mr. Kareem's head. And, again, it's not really designed to
10 capture what's going on. There's no audio, obviously, but
11 it's to see where everyone is moving, where your hands are,
12 that kind of thing, for safety purposes.

13 Q Defense counsel also asked you about recording pretrial
14 witness interviews with prosecutors.

15 A Yes.

16 Q In this case did you record those interviews?

17 A Pretrial interviews?

18 Q Correct.

19 A Never. No.

20 Q And in any case have you ever recorded pretrial
21 interviews?

22 A Never.

23 Q In your experience what's the general purpose of a
24 pretrial witness interview?

25 A So a pretrial interview is an opportunity for the

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1 prosecutors to speak with a person who is a potential witness
2 to kind of explain what the process is going to be, what they
3 can expect, that kind of thing, just to give them a general
4 overview of the process.

5 And then also to go through the things that -- the
6 information they have provided and then to make sure the
7 prosecutors have a complete understanding of all that
8 information.

9 Q And during the course of interviewing any witness, have
10 you ever told any of them what any other witness has said?

11 A Never.

12 Q In pretrial witness interviews, is there an admonition
13 that's given to every witness?

14 A Yes.

15 Q What is it?

16 A It's just to tell the truth. So over -- any time you go
17 to pretrial interview, that's going to be something that's
18 repeated over and over to kind of help set them at ease.

19 It's just at the end of the day when you're on the
20 stand, just tell the truth and then you don't have to think.
21 You just tell the truth.

22 So that's the only admonition that's given.

23 Q And in this case in any interview or every interview that
24 you conducted pretrial or during the investigation itself,
25 when new information came forward, did you generate a report?

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1 A Yes.

2 Q Defense counsel has asked you about 302s. Are those the
3 reports that you generate?

4 A Yes. Those are the reports.

5 Q And every time there is new or additional information, do
6 you note it and put it into a report?

7 A Yes. Any time new information comes out, obviously, I
8 will put that in a report.

9 Q From the beginning in this case, approximately how many
10 302 reports have been drafted?

11 A This is a guess, but I would say probably 300 to 400 or
12 more, maybe even more than 400.

13 Q And did you author every single report?

14 A No.

15 Q Approximately, how many FBI agents were involved in the
16 investigation of this case?

17 A Between the various field officers throughout the United
18 States, I would say more than 200 special agents for sure.

19 Q And how many intelligence analysts?

20 A My estimate, probably minimum of 20 analysts, again, from
21 offices throughout the United States that would have been
22 involved.

23 Q Defense counsel asked you specifically about Ali Soofi's
24 interviews. He spoke about the two pretrial interviews; one
25 in September and another one in January.

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1 He asked you about the September interview and asked
2 whether or not Ali Soofi talked about disassembling,
3 lubricating, and reassembling weapons, how he had watched the
4 defendant teach Simpson and Soofi how to disassemble,
5 lubricate, and reassemble the weapons.

6 MR. MAYNARD: Objection to the form of the question.

7 THE COURT: Sustained.

8 BY MS. BROOK:

9 Q He asked you about how Ali Soofi reported in January that
10 process.

11 A Yes.

12 Q In September during that interview, you were there for it?

13 A Yes.

14 Q At any point was Ali Soofi asked whether or not he had
15 seen anybody disassemble, lubricate, or reassemble weapons?

16 A He was not asked that.

17 Q In the January interview, was he specifically asked that
18 question?

19 A I think as he was reliving the moment and talking about --

20 MR. MAYNARD: Objection.

21 THE COURT: Yes. Could you answer Ms. Brook's
22 question. It was:

23 "In the January interview was he specifically asked
24 that question?"

25 THE WITNESS: I think, yes, eventually, yes.

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1 THE COURT: Excuse me, Ms. Brook. We're going to
2 take our afternoon break.

3 Ladies and gentlemen, we will reconvene in 15
4 minutes. You're reminded of the usual admonitions.

5 Court is in recess for 15 minutes.

6 (Recess taken at 2:32 p.m.; resumed at 2:47 p.m.)

7 THE COURT: Thank you. Please sit down. The record
8 will show the presence of the jury, counsel, and the
9 defendant.

10 Ms. Brook, you may continue.

11 MS. BROOK: Thank you, Your Honor.

12 BY MS. BROOK:

13 Q Defense counsel asked you questions about Stefan Verdugo
14 and the process of interviewing him and how everything came
15 forward.

16 When this investigation began, did the FBI seek out
17 Stefan Verdugo?

18 A No.

19 Q Can you explain that?

20 A Yes. Stefan Verdugo came forward of his own free will, I
21 guess. After seeing the news reported, he reached out and
22 contacted the FBI.

23 Q And the information that Stefan Verdugo provided, was that
24 before or after he was arrested and charged in that other
25 case?

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1 A It was before.

2 Q After it came to the FBI's attention that Stefan Verdugo
3 had been charged in another case, did the FBI assist in
4 arresting Stefan Verdugo?

5 A Yeah. It was actually the FBI that arrested Stefan
6 Verdugo.

7 Q Defense counsel asked about the \$500 payment that Stefan
8 Verdugo received. Was that before or after he had provided
9 information?

10 A That was after he had already provided information.

11 Q Did Stefan Verdugo ever request any money?

12 A No. He never asked for a cent.

13 Q Why did the FBI pay him \$500?

14 A Well, there were a couple reasons.

15 First, meeting with him, we were requiring him to
16 meet us at very late hours and in locations throughout the
17 Phoenix Metro area and we were asking him to provide his own
18 transportation to those areas. So part of it was just to give
19 him money to pay for the fuel and gas, you know, that kind of
20 thing, so that he would continue to agree to meet with us as
21 the investigation moved forward.

22 The other reason was we learned in our talks with him
23 that he had a fine for a suspended license. And so there was
24 a worry that in the course of our investigation, he could get
25 pulled over for that suspended license and not be able to

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1 continue to assist.

2 And so when we found out that amount was around \$500,
3 we told him we would give him \$500, expecting him to pay that,
4 so that he would not have a suspended license anymore and so
5 then he could continue to go forward.

6 Q Defense counsel asked you if during suspect interviews you
7 lie to somebody that you're interviewing?

8 A Yes.

9 Q Why do you do that?

10 A Well, it's -- sometimes people are less than forthcoming
11 and so there is a need, occasionally. But essentially, I mean
12 I'm trying -- I don't think I have ever -- the only lie I have
13 ever given is pretended I know more than I really know.

14 MR. MAYNARD: Objection. It's beyond the scope of
15 the question. He's now going beyond that.

16 THE COURT: The objection is overruled. The answer
17 will stand.

18 BY MS. BROOK:

19 Q Are you trained tactically at the FBI to use that?

20 A Yes.

21 Q How so?

22 A Well, so by -- so basically, how we describe it as
23 whenever you're going to make an accusation, you need to be
24 able to back up that accusation with facts.

25 And so there comes a point when you may need to kind

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1 of create those, so to create the appearance that we know more
2 than we really do, and then that encourages the person we're
3 interviewing to tell us the information we don't know.

4 And then as we receive that information we don't
5 know, we use that and piece it together as the interview is
6 going on to then draw other conclusions, again, as a way to
7 motivate them to tell us the truth.

8 Q Defense counsel yesterday asked you if you are invested in
9 this case. What did you mean?

10 A By "invested"? Well, I mean, like any of my cases,
11 obviously, it's my duty to do the best I can to successfully
12 see the investigations to a conclusion. So I'm invested in
13 all my cases in that sense.

14 Q And "cases," do you have more cases than just this case?

15 A Yes. Yes. Actually, I have twelve.

16 Q Defense counsel also asked you about an e-mail from
17 December. And I'm going to put it on the overhead. It's 558,
18 an e-mail where you stated:

19 Fantastic news. Thank you all three -- or thank you
20 all three of you for all the hard work.

21 Can you explain that?

22 A Yes. This was -- so in the process of pursuing the
23 different charges, there was a lot of work being done by
24 individuals. And so, essentially, I was just trying to send
25 an e-mail to thank people for their hard work and to motivate

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1 them to continue to want to work hard.

2 These are the same kind of, you know, e-mails I would
3 send for other members of the team when they, you know, work
4 long hours.

5 I think as we described, the 24/7 surveillance, so
6 obviously, we weren't doing surveillance for 24/7 but we were
7 working 24/7 until we knew this investigation had been done,
8 you know, same like we do all our investigations.

9 And so when I saw this e-mail, again, that was just a
10 way to try to make everyone -- you know, to tell the people I
11 appreciated their hard work.

12 Q Did you believe that the charged were merited based upon
13 the evidence in this case?

14 MR. MAYNARD: Objection to the form of the question
15 and also calls for -- well, speculation.

16 THE COURT: Overruled. You may answer.

17 THE WITNESS: Yes. I mean, obviously that --

18 THE COURT: "Yes" is sufficient.

19 THE WITNESS: Yes. Yes.

20 BY MS. BROOK:

21 Q And do you have any personal stake in the outcome of this
22 case?

23 A No. I mean, other than it's my job to find the truth and
24 to do the best job I can on every case I have. So as long as
25 that's being accomplished, then that's good.

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1 Q Defense counsel asked you about the timing of drafting a
2 report for -- in conjunction with Stefan Verdugo.

3 And, specifically, he asked about a report that was
4 drafted on December 16th of 2015. And defense counsel stated
5 that that report was drafted prior to visiting Verdugo in
6 custody.

7 A Yes.

8 Q I want to place on the overhead what has not been
9 admitted. In looking at that report, does that refresh your
10 recollection on the date that the interview was conducted with
11 Stefan Verdugo at the Lower Buckeye Jail?

12 A Yes.

13 Q And what date was it?

14 A It was on December 15, 2015.

15 Q So a day before the report was drafted?

16 A Yes.

17 Q During the break did you have a chance to refresh your
18 recollection on Elton Simpson's phone number?

19 A Yes.

20 Q And what is it?

21 A Well, it's the last four ending in 6382.

22 Q So going back and placing on the overhead what's already
23 been admitted as 565 and cross-referencing that number with
24 these text messages, do you see any contact between the
25 defendant and Elton Simpson in terms of inviting him over to

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1 dinner or lunch on May 2nd?

2 A I do not.

3 Q Defense counsel asked you about whether you subpoenaed
4 medical records for the defendant related to his claim that
5 Karen -- or Karem Gonzalez-Fabian hit him.

6 A Yes.

7 Q Don't tell us what was said, but did somebody from the
8 National Insurance Crime Bureau call you?

9 A Yes.

10 Q And do you know what the National Insurance Crime Bureau
11 is?

12 MR. MAYNARD: Objection, Your Honor. It's beyond the
13 scope.

14 THE COURT: Overruled.

15 THE WITNESS: The National Insurance Crime Bureau is
16 a nonprofit organization that teams up with law enforcement
17 and insurance companies, and basically, assists them in
18 identifying and prosecuting those who engage in insurance
19 fraud.

20 BY MS. BROOK:

21 Q Did you speak to somebody from the National Insurance
22 Crime Bureau?

23 A Yes, I did.

24 Q With whom did you speak?

25 A I spoke with a Special Agent. His name was Guy Walters.

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1 Q What did you do after talking to Mr. Walters?

2 A After talking to Mr. Walters, I contacted the victim of
3 the information he had sent, which was Karem Fabian, and asked
4 her for details surrounding the April 6th, 2015, incident
5 where she claimed, you know, someone had banged on her trunk
6 of her car.

7 Q Defense counsel asked you if the defendant's fingerprints
8 were found on any of the guns found at the crime scene in
9 Garland.

10 To your knowledge, were any of Elton Simpson's prints
11 found on any of the weapons at the scene in Garland?

12 A Not -- his fingerprints were not found, nor his DNA on any
13 of the evidence in Garland, so weapons or the notebooks or the
14 ISIS flags or anything, no Elton Simpson.

15 Q Yesterday defense counsel asked you about an indented
16 writing.

17 A Yes.

18 Q Was the letter itself ever recovered?

19 A No.

20 Q And when you received information back from the lab about
21 the contents of that indented writing, that page, was there a
22 date written on that page?

23 A There was not.

24 Q Was there a name written about who it was to?

25 A No. It was addressed to Ismala which is a greeting.

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1 MS. BROOK: Can I collect Exhibit 555, 556, and 557
2 for Maureen to use on the overhead?

3 THE COURT: Yes.

4 BY MS. BROOK:

5 Q Defense counsel yesterday asked you about some envelopes
6 that were found at Elton Simpson's and Nadir Soofi's house.

7 A Yes.

8 Q Specifically, he asked you about three of them. And I
9 want to walk through them one at a time.

10 The first is Exhibit No. 557, already admitted. I'll
11 span out and then focus in.

12 In looking at this and having seen the original,
13 what's the postmark date on this?

14 A It's postmarked August 4th of 2010.

15 Q I want to turn to the second which is already admitted,
16 Exhibit No. 556, and then I'm going to zoom in.

17 What's the postmark date on this letter?

18 A This is March 12th, of 2012.

19 Q I want to turn last to the third letter which is Exhibit
20 557 and then zooming in.

21 I think I transposed that. Hang on one moment. We
22 looked at that one.

23 Let's do this one 555. Zooming out and now all the
24 way into the date. What was the postmark date on this
25 particular letter?

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1 A This letter was postmarked September 15th, 2014.

2 Q Have you had occasion to review the letter that was
3 contained within this envelope?

4 A Yes, I have.

5 Q And the government is going to move to admit Government's
6 Exhibit No. 498. Let me put it on the overhead so the witness
7 can identify it.

8 Do you recognize this?

9 A I do.

10 Q And what is it?

11 A This is the letter that was inside that envelope that was
12 dated 2014 and addressed to Elton Simpson.

13 MS. BROOK: The government moves to admit
14 Government's Exhibit No. 498.

15 MR. MAYNARD: Objection. Lack of foundation. Plus
16 it's beyond the scope.

17 THE COURT: The objection is overruled. 498 is
18 admitted.

19 (Exhibit No. 498 admitted in evidence.)

20 MR. MAYNARD: Can I have a copy?

21 BY MS. BROOK:

22 Q I want to take a step back.

23 So Hassan Abu Jihaad who is that?

24 A Hassan Abu Jihaad was an individual originally from
25 Phoenix who was indicted on terrorism and espionage charges in

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1 or about 2008 for information he provided to al-Qa'ida while
2 employed as a member of the U.S. Navy.

3 Q The letter we looked at just a moment ago which is now
4 admitted, have you had an opportunity to read and review this
5 letter?

6 A Yes. I have read this letter before.

7 Q And does this letter discuss a khalif?

8 A Yes, it does.

9 Q What does it say?

10 A Well, it includes a series of printouts, essentially,
11 arguing against the legitimacy of the Islamic State's
12 declaration of the khalifate.

13 Q Can you explain that?

14 A Yes. So in or about June 29, 2014, the Islamic State
15 declared a khalifate.

16 So they declared that they were going to have this
17 single khalif or leader of you Ummah, which is the community
18 of Muslims throughout the world.

19 They declared that on June 29th. And obviously, with
20 that declaration, there came those that were in favor of it
21 and those that were adamantly opposed to it.

22 And these particular letters are from someone who is
23 adamantly opposed to the declaration of the khalifate. This
24 comes from, again, Abu Jihaad who is an al-Qa'ida supporter
25 and al-Qa'ida and the Islamic State as Mr. Kohlmann --

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1 MR. MAYNARD: Your Honor, this is beyond the scope.
2 Lack of foundation.

3 THE COURT: Sustained. I think it goes beyond your
4 question.

5 MS. BROOK: And we can move on to the next line of
6 questioning.

7 BY MS. BROOK:

8 Q Defense counsel asked you about the tracking and
9 monitoring of the defendant starting on May 8th of 2015 and
10 carrying through to June 10th of 2015 when he was arrested in
11 connection with this case.

12 A Yes.

13 Q Are you familiar with whether or not there was a tracking
14 device that was placed on his car?

15 A There was.

16 Q How did the FBI learn about Sergio Martinez-Chavez?

17 A From that tracking device.

18 MR. MAYNARD: Your Honor, that's beyond the scope.

19 THE COURT: Overruled. You may answer.

20 THE WITNESS: So information obtained from that
21 tracking device, as well as surveillance, revealed that
22 Mr. Kareem drove to Sergio Martinez-Chavez's house on the
23 night of May 14th of 2015 and that he arrived there just
24 before midnight still on the 14th on or about.

25 MS. BROOK: May I have a moment?

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1 THE COURT: Yes.

2 MS. BROOK: I don't have any further questions.

3 THE COURT: Thank you, Agent Whitson. You may step
4 down.

5 (End of Excerpt of Proceedings.)

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C E R T I F I C A T E

I, ELIZABETH A. LEMKE, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 8th day of March, 2016.

s/Elizabeth A. Lemke
ELIZABETH A. LEMKE, RDR, CRR, CPE